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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91389; File No. SR-NYSENAT-2021-05]

### **Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees and Rebates Related to Co-Location**

March 23, 2021

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 10, 2021, NYSE National, Inc. (“NYSE National” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Schedule of Fees and Rebates (“Fee Schedule”) related to co-location to (i) provide Users with access to the systems, and connectivity to the data feeds, of various additional third parties; and (ii) remove obsolete

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

text. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule related to co-location to (i) provide Users with access to the systems, and connectivity to the data feeds, of various additional third parties; and (ii) remove obsolete text.

Proposal to Add Additional Third Party Systems and Third Party Data Feeds

The Exchange proposes to amend the co-location<sup>4</sup> services offered by the Exchange to provide Users<sup>5</sup> with access to the systems, and connectivity to the data

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<sup>4</sup> The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2018. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR-NYSENAT-2018-07) ("NYSE National Co-location Notice"). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. ("ICE").

<sup>5</sup> For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the

feeds, of various additional third parties. The Exchange proposes to make the corresponding amendments to the Exchange's Fee Schedule related to these co-location services to reflect these proposed changes.

As set forth in the Fee Schedule, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers ("Third Party Systems"), and data feeds from third party markets and other content service providers ("Third Party Data Feeds").<sup>6</sup> The lists of Third Party Systems and Third Party Data Feeds are set forth in the Fee Schedule.

The Exchange proposes to provide access to the following additional Third Party Systems: Long Term Stock Exchange, Members Exchange, MIAX Emerald, MIAX PEARL Equities, Morgan Stanley, and TD Ameritrade (the "Proposed Third Party Systems"). The Exchange also proposes to amend the Fee Schedule to change the name of the "Miami International Securities Exchange" Third Party System to "MIAX Options," to change the name of the "MIAX PEARL" Third Party System to "MIAX PEARL Options," and to combine MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald as a single Third Party System on the Fee Schedule. The list of available Third Party Systems in the Fee Schedule would be

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Exchange. See id., supra note 4, at 26314 n.9. As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the "Affiliate SROs"). See id. at 26314 n.11. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-15, SR-NYSEAMER-2021-13, SR-NYSEArca-2021-15, and SR-NYSECHX-2021-05.

<sup>6</sup> See NYSE National Co-Location Notice, supra note 4, at 26322.

amended as follows:

<b>Third Party Systems</b>
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\* \* \* \* \*

ITG TriAct Matchnow
<u>Long Term Stock Exchange (LTSE)</u>
<u>Members Exchange (MEMX)</u>
[Miami International Securities Exchange]
<u>MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald</u>
<u>Morgan Stanley</u>
Nasdaq

\* \* \* \* \*

OTC Markets Group
<u>TD Ameritrade</u>
TMX Group

In addition, the Exchange proposes to provide connectivity to data feeds from Members Exchange (the “Proposed MEMX Third Party Data Feed”), MIAX Emerald (the “Proposed MIAX Emerald Third Party Data Feed”), MIAX PEARL Equities (the “Proposed MIAX PEARL Equities Third Party Data Feed”), and ICE Data Services - ICE TMC<sup>7</sup> (the “Proposed ICE TMC Third Party Data Feed”) (collectively, the “Proposed Third Party Data Feeds”). The Exchange also proposes to change the name of the current “Miami International Securities Exchange/MIAX PEARL” Third Party Data Feed to

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<sup>7</sup> The Proposed ICE TMC Third Party Data Feed is generated by ICE Bonds, an indirect subsidiary of ICE, and includes market data for the ICE TMC alternative trading system. It does not include market data of the Exchange or Affiliate SROs.

“MIAX Options/MIAX PEARL Options” on the Fee Schedule. Further, the Exchange proposes to delete the “NASDAQ OMD” data feed from the list, as it is no longer offered by the content service provider. Finally, the Exchange proposes to change the name of the current “SR Labs – SuperFeed” data feeds to “Vela – SuperFeed,” to reflect the content provider’s recent change to the name of these products.

The list of available Third Party Data Feeds in the Fee Schedule would be amended as follows:

<b>Third Party Data Feed</b>	<b>Monthly Recurring Connectivity Fee per Third Party Data Feed</b>
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\* \* \* \* \*

Global OTC	\$100
[ICE Data Global Index*]	[\$100]
ICE Data Services Consolidated Feed ≤ 100 Mb	\$200

\* \* \* \* \*

ICE Data Services Consolidated Feed Shared Farm >1 Gb	\$1,000
<u>ICE Data Services - ICE TMC</u>	<u>\$200</u>
ICE Data Services PRD	\$200

\* \* \* \* \*

ITG TriAct Matchnow	\$1,000
<u>Members Exchange (MEMX)</u>	<u>\$3,000</u>
<u>MIAX Emerald</u>	<u>\$3,500</u>
[Miami International Securities Exchange] <u>MIAX Options/MIAX PEARL</u>	\$2,000

<u>Options</u>	
<u>MIAX PEARL Equities</u>	<u>\$2,500</u>
Montréal Exchange (MX)	\$1,000

\* \* \* \* \*

NASDAQ OMX Global Index Data Service	\$100
[NASDAQ OMDF]	[\$100]
NASDAQ UQDF & UTDF	\$500

\* \* \* \* \*

OTC Markets Group	\$1,000
<u>Vela</u> [SR Labs] – SuperFeed <500 Mb	\$250
<u>Vela</u> [SR Labs] – SuperFeed >500 Mb to <1.25 Gb	\$800
<u>Vela</u> [SR Labs] – SuperFeed >1.25 Gb	\$1,000
TMX Group	\$2,500

\* \* \* \* \*

The Exchange would provide access to the Proposed Third Party Systems (“Access”) and connectivity to the Proposed Third Party Data Feeds (“Connectivity”) as conveniences to Users. Use of Access or Connectivity would be completely voluntary.

The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Proposed Third Party Systems and connectivity to the Proposed Third Party Data Feeds, as such third parties are not required to make that information public. However, the market for access to Third Party Systems and connectivity to Third Party Data Feeds is competitive. The Exchange competes with other providers – including other colocation providers and market data vendors – that offer access to Third Party Systems and connectivity to Third Party Data Feeds. The Exchange is not aware of any impediment to such third parties offering access to the

Proposed Third Party Systems or connectivity to the Proposed Third Party Data Feeds.

If one or more third parties presently offer, or in the future opt to offer, such Access and Connectivity to Users, a User may utilize the ICE Data Services (“IDS”) network, a third party telecommunication network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

*Access to the Proposed Third Party Systems*

The Exchange proposes to revise the Fee Schedule to provide that Users may obtain connectivity to the Proposed Third Party Systems for a fee. As with the current Third Party Systems, Users would connect to the Proposed Third Party Systems over the internet protocol (“IP”) network, a local area network available in the data center.<sup>8</sup>

As with the current Third Party Systems, in order to obtain access to a Proposed Third Party System, the User would enter into an agreement with the relevant Proposed Third Party, pursuant to which the third party content service provider would charge the User for access to the Proposed Third Party System. The Exchange would then establish a unicast connection between the User and the Proposed Third Party System over the IP network.<sup>9</sup> The Exchange would charge the User for the connectivity to the Proposed Third Party System. A User would only receive, and would only be charged for, access

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<sup>8</sup> See NYSE National Co-Location Notice, supra note 4, at 26322.

<sup>9</sup> Information flows over existing network connections in two formats: “unicast” format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and “multicast” format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

to the Proposed Third Party System for which it enters into agreements with the third party content service provider.

The Exchange has no affiliation with the providers of any of the Proposed Third Party Systems. Establishing a User's access to a Proposed Third Party System would not give the Exchange any right to use the Proposed Third Party System. Connectivity to a Proposed Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to a Proposed Third Party System would not be through the Exchange's execution system.

*Connectivity to the Proposed Third Party Data Feeds*

The Exchange proposes to revise the Fee Schedule to provide that Users may obtain connectivity to the Proposed Third Party Data Feeds for a fee. As with the existing connections to Third Party Data Feeds, the Exchange would receive a Proposed Third Party Data Feed from the content service provider at the data center. The Exchange would then provide connectivity to that data to Users for a fee. Users would connect to the Proposed Third Party Data Feeds over the IP network.<sup>10</sup> The Proposed Third Party Data Feeds would include trading information concerning the securities that are traded on the relevant Proposed Third Party Systems.

As with the existing connections to Third Party Data Feeds, in order to connect to a Proposed Third Party Data Feed, a User would enter into a contract with the content service provider, pursuant to which the content service provider may charge the User for the data feed. The Exchange would receive the Proposed Third Party Data Feed over its fiber optic network and, after the content service provider and User entered into an

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<sup>10</sup> See NYSE National Co-Location Notice, supra note 4, at 26322.



agreement and the Exchange received authorization from the content service provider, the Exchange would retransmit the data to the User over the User's port. The Exchange would charge the User for connectivity to the Proposed Third Party Data Feed. A User would only receive, and would only be charged the fee for, connectivity to a Proposed Third Party Data Feed for which it entered into a contract.

The Exchange has no affiliation with the sellers of the Proposed MEMX Third Party Data Feed, the Proposed MIAX Emerald Third Party Data Feed, or the Proposed MIAX PEARL Equities Third Party Data Feed, and would have no right to use those feeds other than as a redistributor of the data. Similarly, although the Exchange and ICE Bonds – the generator of the Proposed ICE TMC Third Party Data Feed – are both indirect subsidiaries of ICE, the Exchange would have no right to use the Proposed ICE TMC Third Party Data Feed other than as a redistributor of the data. None of the Proposed Third Party Data Feeds would provide access or order entry to the Exchange's execution system. The Proposed Third Party Data Feeds would not provide access or order entry to the execution systems of the third parties generating the feeds. The Exchange would receive the Proposed Third Party Data Feeds via arms-length agreements and would have no inherent advantage over any other distributor of such data.

#### Proposal to Remove Obsolete Text

##### *Proposal to Remove References to ICE Data Global Index*

The Exchange proposes to remove obsolete references to the ICE Data Global Index (the "GIF") from the list of Third Party Data Feeds available for connectivity and related text.

In May 2020, ICE, which publishes the GIF, announced to its customers that before the end of 2020, it would cease offering the GIF as a stand-alone product. The

Exchange accordingly amended its Fee Schedule to inform customers that it would cease offering connectivity to the GIF once it is no longer available.<sup>11</sup>

ICE has now informed the Exchange that it ceased offering the GIF as a stand-alone product, making the references to the GIF obsolete. The operative date was announced through a customer notice. Accordingly, the Exchange proposes to remove “ICE Data Global Index\*” and the corresponding asterisked note from the Fee Schedule.

In order to implement the proposed change, the Exchange proposes to make the following changes to the section of the Fee Schedule entitled “Connectivity to Third Party Data Feeds”:

- In the first paragraph and in the table of Third Party Data Feeds, delete “ICE Data Global Index\*”.
- Following the table of Third Party Data Feeds, delete the following text:

*\* ICE will cease to offer the GIF as a stand-alone product, which the Exchange has been informed by ICE is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice. Any change fees that a User would otherwise incur as a result of the proposed change will be waived.*

*Proposal to Remove the Temporary Waiver of Hot Hands Fees*

The Exchange proposes to remove the obsolete reference to the waiver of Hot Hands fees in light of the reopening of the Mahwah, New Jersey data center.

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<sup>11</sup> See Securities Exchange Act Release No. 88981 (June 1, 2020), 85 FR 34690 (June 5, 2020) (SR-NYSENAT-2020-19).

In March 2020, ICE announced to each User that, starting on March 16, 2020, the Mahwah, New Jersey data center would be closed to third parties in response to COVID-19. The Exchange temporarily waived all Hot Hands fees from the date of the closing through the date of the reopening of the data center, and added a note to the fees for the Hot Hands service stating as much.<sup>12</sup>

The Mahwah, New Jersey data center reopened on October 1, 2020. The date of the reopening was announced through a customer notice. As a result of the reopening, the waiver of Hot Hands fees ceased, and the note became obsolete. The Exchange now proposes to remove the obsolete text.

In order to implement this proposed change, the Exchange proposes to make the following changes to the Fee Schedule:

- In the Types of Service table, remove the “†” symbol after “Hot Hands Service\*\*\*”.
- Following the Types of Service table, remove the following text:

† Fees for Hot Hands Services will be waived beginning on March 16, 2020 through the reopening of the Mahwah, New Jersey data center. The date of the reopening will be announced through a customer notice.

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<sup>12</sup> The Exchange first waived the Hot Hands Fee in a March 17, 2020 filing, and subsequently extended the waiver four times. See Securities Exchange Act Release Nos. 88399 (March 17, 2020), 85 FR 16428 (March 23, 2020) (SR-NYSENAT-2020-10); 88521 (March 31, 2020), 85 FR 19194 (April 6, 2020) (SR-NYSENAT-2020-14); 88958 (May 27, 2020), 85 FR 33764 (June 2, 2020) (SR-NYSENAT-2020-18); 89175 (June 29, 2020), 85 FR 40354 (July 6, 2020) (SR-NYSENAT-2020-20); and 89653 (August 25, 2020), 85 FR 53874 (SR-NYSENAT-2020-26).

### Application and Impact of the Proposed Changes

The proposed changes would not apply differently to distinct types or sizes of market participants. Rather, they would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedule is applied uniformly to all Users.

As with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to the Proposed Third Party Systems. Specifically, when a User requests access to a Proposed Third Party System, it would identify the applicable content service provider and what bandwidth connection is required. The Exchange proposes to modify its Fee Schedule to add the Proposed Third Party Systems to its existing list of Third Party Systems. The Exchange does not propose to change the monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System, including the Proposed Third Party Systems.

As it does with the existing Third Party Data Feeds, the Exchange proposes to charge a monthly recurring fee for connectivity to the Proposed Third Party Data Feeds. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in the Proposed Third Party Data Feeds. The Exchange proposes to add the following fees for connectivity to the Proposed Third Party Data Feeds to its existing list in the Fee Schedule: (i) \$200 per month for ICE Data Services - ICE TMC; (ii) \$3,000 per month for Members Exchange; (iii) \$3,500 per month for MIAX Emerald, and (iv) \$2,500 per month for MIAX PEARL Equities.

Under this proposal, obsolete references to connectivity to the GIF data feed and the temporary waiver of Hot Hands fees would be removed for all Users.

## Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (e.g., Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>13</sup>

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

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<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>16</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

#### The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable and would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest, for the following reasons.

The Exchange believes that the proposed change to Access and Connectivity is reasonable and would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because by offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. In addition, the Exchange believes that the proposed change is reasonable because by offering Access and Connectivity to Users when available, the

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<sup>16</sup> 15 U.S.C. 78f(b)(4).

Exchange would give Users additional options for connectivity and access to new services as soon as they are available, responding to User demand for access and connectivity options.

The Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Proposed Third Party Systems and connectivity to the Proposed Third Party Data Feeds. However, if one or more third parties presently offer, or in the future opt to offer, such access and connectivity to Users, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange also believes that the proposed rule change to Access and Connectivity is reasonable because the Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange and adopt a possible range of alternative strategies, including placing

their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. For these reasons, an exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange also believes that the proposed rule change to Access and Connectivity is reasonable because the market for access to Third Party Systems and connectivity to Third Party Data Feeds is competitive. The Exchange competes with other providers – including other colocation providers and market data vendors – that offer access to Third Party Systems and connectivity to Third Party Data Feeds. Although the Exchange does not have complete visibility into whether third parties currently offer, or intend to offer, Users access to the Proposed Third Party Systems and connectivity to the Proposed Third Party Data Feeds (as such third parties are not required to make that information public), the Exchange understands that at least one other vendor is currently offering the Proposed MIAX Third Party Data Feeds. As such, the Exchange is not aware of any impediment to such third parties offering substitutes to such Access and Connectivity. If the Exchange were to propose to charge supra-competitive fees for access to any of the Proposed Third Party Systems or connectivity to any of the Proposed Third Party Data Feeds, the Exchange's competitors would respond by offering such access and connectivity at lower rates, and market participants would respond by substituting the Exchange's offerings with more competitively-priced access and connectivity options available from other providers. As such, competition and the



availability of substitutes is a check on the Exchange's ability to charge unreasonable fees for Access and Connectivity.

The Exchange further believes that the proposed change to Access and Connectivity is reasonable because in order to offer the Access and Connectivity as conveniences to Users, the Exchange must provide, maintain, and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support, and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds.

In addition, in order to provide Access and Connectivity, the Exchange would establish and maintain multiple connections to each Proposed Third Party System and Proposed Third Party Data Feed, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees charged by the relevant third party, such as port fees. For example, the Exchange already offers several Third Party Data Feeds supplied by ICE Data Services, such that the Exchange could add the Proposed ICE TMC Third Party Data Feed over this established connection with less effort. In contrast, in order to offer connectivity to the Proposed MEMX Third Party Data Feed, the Proposed MIAX Emerald Third Party Data Feed, and the Proposed MIAX PEARL Equities Data Feed, the Exchange must establish and maintain connections to those exchanges, which requires

significantly more effort. As such, it is reasonable for the Exchange to offer connectivity to the Proposed ICE TMC Third Party Data Feed at a lower fee than it proposes to charge for connectivity to the Proposed MEMX Third Party Data Feed, the Proposed MIAX Emerald Third Party Data Feed, and the Proposed MIAX PEARL Equities Third Party Data Feed. Further, the different fees that the Exchange proposes for the Proposed MIAX Emerald Third Party Data Feed and the Proposed MIAX PEARL Equities Third Party Data Feed are reflective of the fact that MIAX charges separate fees to the Exchange to become a distributor of each of its data feed products, and that these distribution fees that the Exchange must pay to MIAX are higher for the Proposed MIAX Emerald Third Party Data Feed than for the Proposed MIAX PEARL Equities Third Party Data Feed.

As such, the Exchange believes the proposed fees for Access and Connectivity are reasonable because they would allow the Exchange to defray or cover the costs associated with offering Users Access and Connectivity while providing Users the convenience of receiving such Access and Connectivity within co-location, helping them to tailor their data center operations to the requirements of their business operations.

The Exchange believes that removing obsolete text from the Fee Schedule would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest. Because the GIF is no longer available as a stand-alone data feed, the references to the GIF and its associated fee in the Fee Schedule are obsolete. Similarly, because the Mahwah, New Jersey data center has reopened, the note to the Hot Hands service has become obsolete. In both cases, removing the obsolete text would enhance the clarity and transparency of the Fee

Schedule and reduce potential customer confusion.

#### The Proposed Rule Change Is Equitable

The Exchange believes that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities, for the following reasons.

First, the proposed fees for Access and Connectivity would not apply differently to different types or sizes of market participants. Rather, the proposed fees would apply equally to any User that opts to access the Proposed Third Party Systems or connect to the Proposed Third Party Data Feeds, irrespective of that User's size or the type of market participant it is.

Second, under the proposed rule change, only Users that choose to connect to the Proposed Third Party Systems and Proposed Third Party Data Feeds would be charged the proposed fees for Access and Connectivity. Users who opt not to use the Access or Connectivity would not be charged. In this way, the proposed rule change equitably allocates the proposed fees only to Users who choose to use the Proposed Third Party Systems and Proposed Third Party Data Feeds.

In addition, as noted above, the Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. By offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. A User

that does not wish to use the Access or Connectivity offered by the Exchange is not required to do so.

The Exchange is not aware of any impediment to third parties offering Access or Connectivity. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Proposed Third Party Systems and connectivity to the Proposed Third Party Data Feeds, as third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such access and connectivity to Users, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that removing obsolete text from the Fee Schedule would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest. Because the GIF is no longer available as a stand-alone data feed, the references to the GIF and its associated fee in the Fee Schedule are obsolete. Similarly, because the Mahwah data center has reopened, the note to the Hot Hands service has become obsolete. The changes would have no impact on pricing. Rather, they would remove obsolete text, thereby clarifying the Exchange rules and alleviating possible market participant confusion.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change does not permit unfair discrimination between customers, issuers, brokers, or dealers, for the following reasons.

First, the proposed Access and Connectivity are available on equal terms to all Users. Users that opt to use the proposed Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the content provider may receive access or connectivity.

Second, the proposed fees for Access and Connectivity would not apply differently to different types or sizes of market participants. Rather, the proposed fees would apply equally to any User that opts to access the Proposed Third Party Systems or connect to the Proposed Third Party Data Feeds, and would not unfairly discriminate against any User based on the User's size or the type of market participant it is.

Third, the proposed rule change does not permit unfair discrimination between market participants because only Users that choose to connect to the Proposed Third Party Systems and Proposed Third Party Data Feeds would be charged the proposed fees for access and connectivity. Users who opt not to use the Access or Connectivity will not be charged.

In addition, as noted above, the Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. By offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. A User that does not wish to use the Access or Connectivity offered by the Exchange is not required to do so.

The Exchange is not aware of any impediment to third parties offering Access or Connectivity. The Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users access to the Proposed Third Party Systems and connectivity to the Proposed Third Party Data Feeds, as third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such access and connectivity to Users, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that removing obsolete text from the Fee Schedule would not permit unfair discrimination between customers, issuers, brokers, or dealers. Because the GIF is no longer available as a stand-alone data feed, the references to the GIF and its associated fee in the Fee Schedule are obsolete. Similarly, because the Mahwah data center has reopened, the note to the Hot Hands service has become obsolete. The changes would have no impact on pricing. Rather, they would remove obsolete text, thereby clarifying the Exchange rules and alleviating possible market participant confusion.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

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For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>17</sup> the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed changes would not place any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, for the following reasons.

The proposed change to Access and Connectivity would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. The Exchange believes that providing Users with these additional options for access and connectivity to new services would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, and would in fact enhance intramarket competition, by giving Users additional access and connectivity options through which they may differentiate their business operations from each other.

The Exchange does not have visibility into whether third parties currently offer,

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<sup>17</sup> 15 U.S.C. 78f(b)(8).

or intend to offer, Users access to the Proposed Third Party Systems and connectivity to the Proposed Third Party Data Feeds, as third parties are not required to make that information public. However, if one or more third parties presently offer, or in the future opt to offer, such access and connectivity to Users, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

In this way, the proposed changes would enhance intramarket competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange further believes that removing the GIF and its associated fee from the list of Third Party Data Feeds available for connectivity in the Fee Schedule and removing the note regarding the temporary waiver of the Hot Hands fee would not permit unfair discrimination between customers, issuers, brokers, or dealers would not place any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are not designed to address any competitive issue, but rather to remove obsolete text, thereby clarifying Exchange rules and alleviating any possible market participant confusion. The removal of the obsolete text would not put any market participants at a relative disadvantage compared to other market participants, or penalize one or more categories of market participants in a manner that would impose an undue burden on competition.



### Intermarket Competition

The Exchange believes that the proposed changes will not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, for the following reasons.

The Exchange operates in a highly competitive market in which exchanges and other vendors (i.e., Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, an exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>20</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

19(b)(2)(B)<sup>21</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSENAT-2021-05 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2021-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

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<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2021-05 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>22</sup> 17 CFR 200.30-3(a)(12).